

ORDINANCE NO. 2021-06

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRAWLEY, CALIFORNIA,
AMENDING CHAPTER 19H OF THE BRAWLEY MUNICIPAL CODE CONCERNING THE
USE AND POSSESSION OF FIREWORKS.**

**THE CITY COUNCIL OF THE CITY OF BRAWLEY, CALIFORNIA, DOES HEREBY ORDAIN
AS FOLLOWS:**

SECTION 1. Purpose: The purpose of this ordinance is to impose administrative penalties on those who use and possess fireworks contrary to the terms of the Brawley Fireworks Ordinance and to impose administrative penalties on property owners who allow others to use and possess fireworks contrary to the terms of the Brawley Fireworks Ordinance.

SECTION 2. Findings: The City Council finds that in recent years the use and possession of illegal fireworks in the city limits has increased at an alarming rate and that said use and possession of illegal fireworks in the city limits of the City of Brawley has become a public nuisance.

The City Council further finds that the use and possession of illegal fireworks has not been curtailed by the City's effort to educate the public on the dangers of illegal fireworks and the City's effort to enforce the criminal penalties contained in the Brawley Fireworks Ordinance.

The City Council further finds that enforcement efforts of the criminal penalties have been hampered by the fact that for criminal penalties to apply, a peace officer must witness the prohibited conduct.

The City Council further finds that often it is possible for law enforcement officers to identify the property where the use of illegal fireworks is occurring while not being able to identify the person using illegal fireworks.

The City Council further finds that an urgency exists inasmuch as by the time this ordinance is considered for a second reading the annual Fourth of July Holiday will be near and experience shows that illegal fireworks become a significant public nuisance at that time. Therefore the Council declares that this is an urgency ordinance and it shall become effective immediately upon its final passage pursuant to Cal. Govt. Code § 36937.

SECTION 3. Amendment of Municipal Code: Chapter 19H. of the Brawley Municipal Code is hereby amended to add the following:

Under Section 19H.4 the following definition is added:

"Host" means a person who either:

1. Is in charge of private property, including, but not limited to, an owner, tenant, landlord, or property manager of the property; or
2. Organizes, supervises, officiates, conducts, controls, or is otherwise in charge of the activity on the property.

Article VII is added to read as follows:

Article VII - Host's Liability.

- (a) No host shall allow any person to violate a provision of the Brawley Fireworks Ordinance on the host's private property, except as provided below in subsection (a)2
 - 1. Whenever a host is present at the private property while another person violates a provision of this chapter, there shall be a rebuttable presumption that the host knew or should have known of the violation.
 - 2. The provisions this section shall not apply to:
 - A. The possession, manufacture, storage, display, sale, use, or discharge of fireworks as permitted under federal, state or local law;
 - B. A host who initiates contact with law enforcement or fire officials to assist in removing any person from the property or terminating the activity in order to comply with this chapter, if the request for assistance is made before any other person contacts law enforcement or fire officials to complain about the violation of this chapter.
- (b) No host shall aid or abet another person's violation of a provision of this chapter in a public right of way adjacent to the host's private property. A host aids and abets another person's violation of a provision of this chapter if he or she knows of the other person's unlawful purpose and the host specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the other person's commission of that violation.

Article VIII is added to read as follows:

Article VII Violation-Penalty.

- (a) In addition to any other remedy allowed by law, any person who violates a provision of the Brawley Fireworks Ordinance is subject to criminal sanctions, civil actions, and administrative penalties pursuant to Chapter 19F of the Brawley Municipal Code.
- (b) Notwithstanding the provisions of section 19F.3, the amount of an administrative penalty for a violation of the Brawley Fireworks Ordinance is:
 - 1. \$1,000 for the first violation;
 - 2. \$2,500 for the second violation within one year of the first violation; and
 - 3. \$5,000 for each additional violation within one year of the first violation.

(c) Any host who violates Article VII of the Brawley Fireworks Ordinance is liable for the response costs relating to the violation. All hosts who violate Article VII of the Brawley Fireworks Ordinance in the same incident are jointly and severally liable for the response costs relating to the violation. The amount of response costs constitutes a debt owed to the city.

1. Notice of the response costs shall be served by first-class mail on the hosts liable for such costs. The notice shall contain the following information:

A. The name of the host who is liable for the response costs;

B. The address of the private property where the incident occurred;

C. The date and time of the response;

D. The law enforcement, fire, or other emergency response personnel who responded; and

E. An itemized list of the response costs.

2. Payment for response costs shall be remitted to the city of Brawley within 30 calendar days of the date of the notice. The payment of any such costs shall be stayed upon the filing of a timely appeal.

3. A host charged with response costs may, within 10 calendar days of the date of the notice of response costs, appeal the response costs in accordance with Section 19F.7 of the Brawley Municipal Code. The appeal hearing shall be scheduled and conducted in the manner prescribed in therein. Failure to timely file an appeal constitutes a failure to exhaust available administrative remedies, and bars any further review or administrative appeal of the response costs.

(d) Violations of the Brawley Fireworks Ordinance are hereby declared to be a public nuisance.

(e) All remedies prescribed under the Brawley Fireworks Ordinance are cumulative and the election of one or more remedies does not bar the city from the pursuit of any other remedy available to the City.

SECTION 4. Effective Date: This ordinance shall be effective immediately after its adoption and the City Clerk shall cause a certified copy of this ordinance to be published one time within fifteen (15) days after its adoption in the Imperial Valley Press, a newspaper of general circulation printed in Imperial County and circulated in the City of Brawley.

APPROVED, PASSED AND ADOPTED at a regular meeting of the City Council held on the 1st day of June 2021.

CITY OF BRAWLEY, CALIFORNIA


Luke Hamby, Mayor

ATTEST:


Alma Benavides, City Clerk


STATE OF CALIFORNIA)
COUNTY OF IMPERIAL)
CITY OF BRAWLEY)

1st Reading

I, Alma Benavides, City Clerk of the City of Brawley, California, DO HEREBY CERTIFY that the foregoing Ordinance No. 2021-06 was passed and adopted by the City Council of the City of Brawley, California, at a regular meeting held on the 1st day of June 2021 and that it was so adopted by the following roll call vote: m/s/c Couchman/Nava 4-1 Castro Naye

AYES: Couchman, Hamby, Nava, Wharton
NAYES: Castro
ABSTAIN: None
ABSENT: None

DATED: June 1, 2021


Alma Benavides, City Clerk

2nd Reading Urgency Ordinance

I, Alma Benavides, City Clerk of the City of Brawley, California, DO HEREBY CERTIFY that the foregoing Ordinance No. 2021-06 was passed and adopted by the City Council of the City of Brawley, California, at a adjourned regular meeting held on the 15th day of June 2021 and that it was so adopted by the following roll call vote: m/s/c Wharton/Nava 5-0

AYES: Castro, Couchman, Hamby, Nava, Wharton
NAYES: None
ABSTAIN: None
ABSENT: None

DATED: June 15, 2021


Alma Benavides, City Clerk